

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Emily Sims	Team: Team # 6	CCRB Case #: 200606723	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 05/20/2006 9:20 PM	Location of Incident: In front of 409 Beach 51st Street in Queens, N.Y.	Precinct: 101	18 Mo. SOL 11/20/2007	EO SOL 11/20/2007	
Date/Time CV Reported Wed, 05/24/2006 10:42 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 05/24/2006 10:42 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM David Pulice	08184	930988	101 PCT
2. SGT Carlos Fabara	01279	922317	101 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Carlos Fabara	Abuse: Sgt. Carlos Fabara stopped and questioned § 87(2)(b)	
B.POM David Pulice	Abuse: PO David Pulice stopped and questioned § 87(2)(b)	
C.SGT Carlos Fabara	Abuse: Sgt. Carlos Fabara frisked § 87(2)(b)	
D.POM David Pulice	Abuse: PO David Pulice searched the car in which § 87(2)(b) was an occupant.	
E.SGT Carlos Fabara	Abuse: Sgt. Carlos Fabara refused to provide his name and shield number to § 87(2)(b)	

Synopsis

On May 20, 2006, § 87(2)(b) was driving to his girlfriend, § 87(2)(b)s, home in Queens. As § 87(2)(b) waited at a light on Beach 51st Street, he noticed a tan impala across the intersection from him. § 87(2)(b) suspected that the vehicle was an unmarked police vehicle and watched as it turned behind him, stopped five car lengths behind him on Beach 51st Street, then parked in front of his vehicle after he backed into a parking spot and exited. The occupants of the police vehicle, identified as PO David Pulice from his tax ID on summonses later issued, and Sgt. Carlos Fabara (identified by the CCRB), approached § 87(2)(b) and summoned him back to his vehicle. Sgt. Fabara requested § 87(2)(b) identification and vehicle information, which he provided (Allegations A and B), then Sgt. Fabara frisked § 87(2)(b) with § 87(2)(b) hands atop the roof of his vehicle (Allegation C). Sgt. Fabara directed § 87(2)(b) to the rear of the vehicle and handed § 87(2)(b) his identification. During this time, PO Pulice searched inside § 87(2)(b) vehicle, looking around the front driver and passenger sides (Allegation D). § 87(2)(b) was now outside and stood near § 87(2)(b) vehicle for the remainder of the incident. § 87(2)(b) informed the officers that he did not give PO Pulice permission to search his vehicle and he requested that the officers write down their names and shield numbers at the conclusion of the incident. Sgt. Fabara replied that their names would be on the summonses the officers would be issuing § 87(2)(b) and requested his identification and vehicle information once again. PO Pulice and Sgt. Fabara returned to the police vehicle and some time later, Sgt. Fabara returned and handed § 87(2)(b) two summonses, issued by PO Pulice, for making a left turn without signaling and for driving with an expired license. Sgt. Fabara never provided his name or shield number to § 87(2)(b) (Allegation E).

§ 87(2)(b), § 87(2)(g)

Summary of Complaint

§ 87(2)(b) Sr. filed this complaint with the CCRB over the phone on May 24, 2006 (Enc. 4a-b). § 87(2)(b) Sr. was not a witness to the events, but relayed the incident on behalf of his son, § 87(2)(b) Jr. The CCRB spoke with § 87(2)(b) Jr. over the phone on June 5, 2006 (Enc. 5) and interviewed him in person on June 16, 2006 (Enc. 6a-d). Both statements were nearly identical. § 87(2)(b) drives a 1993 burgundy Caprice with tinted windows and very bright, blue headlights. On May 20, 2006, at approximately 9:20 p.m., § 87(2)(b) was driving from his apartment, § 87(2)(b), to his girlfriend's home at § 87(2)(b), both in Queens. As § 87(2)(b) waited at a red light to turn north (left) onto Beach 51st Street, he noticed an unmarked, tan Impala opposite him (facing west) in the far right lane. There was one vehicle in front of § 87(2)(b) and one to either side of him as the light turned green and he turned left. The tan Impala, which § 87(2)(b) suspected to be a police vehicle, followed him. § 87(2)(b) paused halfway between the corner and § 87(2)(b)s building and the tan Impala stopped approximately five car lengths behind him. § 87(2)(b) drove on and parked his car directly in front of § 87(2)(b)s building where cars are required to park at a ninety-degree angle to the traffic lanes. § 87(2)(b) backed into a spot and as he exited his vehicle and shut the door, the tan Impala pulled up and stopped in the street perpendicular to the front of his car.

§ 87(2)(b) began walking toward the sidewalk with his keys in his hand. Two males in plain clothes exited the Impala and summoned § 87(2)(b) back to his vehicle. They asked for his license and car information. § 87(2)(b) complied with this request and an officer, identified by the CCRB as Sgt. Carlos Fabara, told him that he needed to search § 87(2)(b) to "make sure he didn't have anything on him that he wasn't supposed to have." § 87(2)(b) faced his car and placed his hands atop the roof, leaving his keys on the hood. As Sgt. Fabara frisked § 87(2)(b) PO David Pulice (as identified from the bottom of the summonses later issued) took his keys off of the hood. Sgt. Fabara patted § 87(2)(b) down but definitely did not enter any of his pant's pockets although he could have placed his hands inside § 87(2)(b) jacket pockets because they are large and stick out, but § 87(2)(b) was not certain. Sgt. Fabara found nothing on § 87(2)(b) person. Sgt. Fabara gave § 87(2)(b) his license and vehicle information and then told § 87(2)(b).

§ 87(2)(b) to step onto the sidewalk near the rear of his vehicle. § 87(2)(b) stepped onto the sidewalk with his back to his vehicle and Sgt. Fabara faced him.

Five seconds later, § 87(2)(b) turned around and saw PO Pulice inside the front driver's side of his vehicle but did not see exactly what he was doing. § 87(2)(b) asked Sgt. Fabara, "did I give him permission to search my car?" Sgt. Fabara responded, "I don't know, did you?" There were only approximately five feet between all three men, so if one person said something, the others would have heard. § 87(2)(b) confirmed the fact that he did not give PO Pulice permission to search his car. Three or four seconds after that, § 87(2)(b) requested that before Sgt. Fabara leave the scene, he write down he and PO Pulice's names and shield numbers. Sgt. Fabara responded, "I'll make sure I write it on the summons I am going to give you" for not signaling while making a left turn. § 87(2)(b) told Sgt. Fabara that he did not care what kind of summons he was receiving, all he cared about was getting the officers' names and shield numbers because he was upset that they searched his vehicle without permission. § 87(2)(b) told the CCRB investigator that if the officers had asked to search his vehicle, he would have let them because he did not have anything to hide inside. § 87(2)(b) told the officers, "Make sure your information is on whatever ticket you feel like writing me." § 87(2)(b) had seen § 87(2)(b) pull up to her building because of his very bright head lights, and by this time, she was wondering what was taking him so long to get inside, so she walked out and stopped near § 87(2)(b) vehicle. Sgt. Fabara told her to step away, so she complied and stepped back onto the sidewalk. § 87(2)(b) stood on the sidewalk for the remainder of the incident.

§ 87(2)(b) observed PO Pulice move from the driver's side to the passenger's side of § 87(2)(b) vehicle, and when PO Pulice was finished, the officers asked for § 87(2)(b) identification again. § 87(2)(b) gave it to them and Sgt. Fabara told him to sit in his car while they wrote the summons. As Sgt. Fabara and PO Pulice returned to the police vehicle to write the summonses, § 87(2)(b) requested once or twice more that they write down their names and shield numbers for him. § 87(2)(b) stood next to the rear of his vehicle instead of sitting inside and waited for the officers to finish. Two uniformed officers pulled up in a marked police vehicle and parked beside the tan Impala. All four officers spoke for a few minutes, and appeared to be looking through a book of codes in order to write § 87(2)(b) summonses. When Sgt. Fabara brought § 87(2)(b) the two summonses and his license, § 87(2)(b) asked once again for he and his partner's name and shield number. Sgt. Fabara said, "Well, we will both be there in court when you go to court." § 87(2)(b) was issued a summons for failing to signal while making a left turn, and one for driving on an expired license.

Results of Investigation

Witness

§ 87(2)(b) was interviewed at the CCRB on June 16, 2006 (Enc.7a-d). § 87(2)(b) is § 87(2)(b) girlfriend, she resides at § 87(2)(b) in Queens. On May 20, 2006, at approximately 9:20 p.m., § 87(2)(b) saw the headlights of § 87(2)(b) vehicle arriving outside her building through her kitchen window. § 87(2)(b) has bright, blue headlights on his burgundy Caprice, so the entire street illuminates when he is driving down it. After noticing that he had pulled up to her apartment, § 87(2)(b) placed some food into the microwave for them to eat.

After approximately four or five minutes, § 87(2)(b) was still not at her apartment, so she looked out of her kitchen window once again. § 87(2)(b) noticed that § 87(2)(b) was speaking with one plain-clothed male, identified by the CCRB as Sgt. Fabara. There was another plain clothed male, identified by the CCRB as PO David Pulice, inside § 87(2)(b) vehicle with both the front driver's side and front passenger's side doors open. § 87(2)(b) knew right away that these were police officers, so she ran to her room, put on sneakers, then headed outside.

When § 87(2)(b) got outside, she saw a tan Impala parked in the street perpendicular to § 87(2)(b) vehicle. There was a marked police vehicle parked directly next to the Impala further toward the middle of the road. § 87(2)(b) was now speaking to both Sgt. Fabara and PO Pulice. Sgt. Fabara asked § 87(2)(b) for his license. As § 87(2)(b) approached, Sgt. Fabara asked her to move away, so she stepped onto the sidewalk. § 87(2)(b) immediately handed Sgt. Fabara his license (and most likely his vehicle's registration and insurance from inside his wallet) and asked both officers to write down their names and shield numbers as they walked away to the tan Impala. The marked police vehicle left the scene soon after Sgt. Fabara and PO Pulice sat in their vehicle. § 87(2)(b) tried to speak to § 87(2)(b) as he was waiting for the officers to come back out, but he was concentrating on them and did not hear her. Sgt. Fabara exited the police vehicle two or three minutes later and handed § 87(2)(b) two summonses and his license. § 87(2)(b)

§ 87(2)(b) asked again for their names and shield numbers and Sgt. Fabara responded, “We will see you again in court.” Sgt. Fabara and PO Pulice drove a few feet down the street then Sgt. Fabara exited the vehicle and brought § 87(2)(b) his car keys, which they had mistakenly kept.

Officer Statements

On May 20, 2006, PO Pulice issued two summonses (Enc.9a-b) to § 87(2)(b) one for making a left turn without signaling, and another for driving with an expired license. On the back of one of the summonses, PO Pulice noted “Traveling E/B on BCD. No left turn signal onto B51st. Driver made lunges to put stuff underneath seats.” PO Pulice also filled out the stop and frisk report regarding this incident (Enc.10a-b). On the report, PO Pulice indicated that § 87(2)(b) was stopped for criminal possession of weapon, that § 87(2)(b) made furtive movements, refused to comply with officers’ directions, and was frisked. PO Pulice also noted on the report that the area has high incidence of reported offense of type under investigation, and that § 87(2)(b) provided evasive, false, or inconsistent responses to officers’ questions.

Sgt. Carlos Fabara was interviewed at the CCRB on August 2, 2006 (Enc.13a-b). PO David Pulice was interviewed at the CCRB on July 26, 2006 (Enc.12a-b). On May 20, 2006, Sgt. Fabara and PO Pulice were assigned to anti crime. Both officers were in plain clothes and riding in an unmarked police vehicle. Sgt. Fabara’s membook was unavailable at the time of his interview. According to PO Pulice’s memobook, § 87(2)(b) was stopped for CPW in front of 409 Beach 51st Street and two summonses were issued to him, one for not signaling when turning and one for driving on an expired license. Sgt. Fabara and PO Pulice’s statements were consistent except where noted below.

According to Sgt. Fabara, he and PO Pulice were travelling westbound on Beach Channel Drive when they observed a vehicle, whose driver was later identified as § 87(2)(b) driving eastbound on Beach Channel Drive making a left turn onto Beach 51st Street (northbound). Both the police vehicle and § 87(2)(b) vehicle were the first cars in line at the intersection. PO Pulice told the CCRB that Sgt. Fabara was driving and the police vehicle was directly behind § 87(2)(b) as he turned left onto Beach 51st Street through a green light. Sgt. Fabara followed § 87(2)(b) without having to stop because there were no other vehicles in the area. Both officers observed the complete left turn with no signal. Sgt. Fabara testified that § 87(2)(b) turned near the Edgemere Houses, which is “a high crime area with many incidents of gun violence.” The officers followed § 87(2)(b) in order to conduct a vehicle stop for the traffic violation. § 87(2)(b) backed his vehicle into a parking spot twenty or thirty feet from the intersection. The front of § 87(2)(b) car was facing the street. Sgt. Fabara recalled that he and PO Pulice activated their emergency lights as they stopped perpendicular to § 87(2)(b) vehicle and that as soon as the emergency lights came on, § 87(2)(b) looked at the officers with a “distinct sign of alarm and nervousness.” PO Pulice recalled that the officers slowed down in front of § 87(2)(b) vehicle and § 87(2)(b) looked directly inside the police vehicle at PO Pulice and Sgt. Fabara, straight into the officers’ eyes. Sgt. Fabara’s drivers’ side was closest to § 87(2)(b) vehicle. PO Pulice stated that § 87(2)(b) “seemed nervous and (a couple seconds passed, then) he started lunging, leaning forward, and lunging under the seats.” The officers could not see his face, the top of his head was showing over the steering wheel, and his shoulders could be seen moving from left to right, but no other portion of his body was above the dashboard. Sgt. Fabara’s observations regarding the “furtive movements” corresponded with PO Pulice’s. Sgt. Fabara added that he “wasn’t sure if he was putting something under the seat or pulling something out... so at that point I was fearful that he may have been ditching or retrieving a weapon.” These movements lasted a couple seconds.

The officers immediately approached § 87(2)(b) who was still seated in his vehicle. The officers requested that § 87(2)(b) exit his vehicle and he complied immediately. § 87(2)(b) said nothing and left his door ajar. A street light was on and illuminating the area so both officers had flashlights in their hands but not turned on. Sgt. Fabara noted that § 87(2)(b) seemed to be angry about being stopped. While PO Pulice recalled explaining that they stopped § 87(2)(b) because of the traffic violation and that his lunging actions and his nervousness were the reason they asked him to get out of the vehicle, Sgt. Fabara recalled this conversation taking place later in the incident. PO Pulice stated that the officers informed § 87(2)(b) that, for their safety and his safety, they needed to frisk him for weapons, however Sgt. Fabara stated that as soon as § 87(2)(b) exited his vehicle, he frisked him to see if he had any weapons. PO Pulice stood nearby in a support position. No weapons were found on § 87(2)(b) person. The officers requested that § 87(2)(b) step to the back of the vehicle while PO Pulice looked into the lungable areas of the vehicle where he saw § 87(2)(b) reaching prior to the stop (driver’s side floor and passenger side floor). PO Pulice conducted the

limited search with his flashlight. Half of his body was leaning inside the vehicle. He never had to open the front driver's door, nor did he sit in the seat. PO Pulice opened the passenger side door and leaned in the same way. According to Sgt. Fabara, once PO Pulice had finished his investigation, the officers explained to § 87(2)(b) why they stopped him.

Details regarding the remainder of the incident are according to PO Pulice's statement, as Sgt. Fabara only recalled the general episode. PO Pulice asked for § 87(2)(b) license, registration, and insurance. PO Pulice and Sgt. Fabara asked § 87(2)(b) where he lived and who he was visiting in the building because his identification did not correspond with the building's address. § 87(2)(b) license was expired. Sgt. Fabara and PO Pulice sat in the police vehicle and wrote two summonses and returned them to § 87(2)(b) explaining to him the court proceedings regarding the summons. A marked RMP drove by and the officers waved them along. PO Pulice confirmed that the traffic violation was the initial observation and reason for stopping § 87(2)(b) but § 87(2)(b) was frisked and the vehicle searched for possible criminal possession of a weapon because of his suspicious movements inside his vehicle. Both PO Pulice and Sgt. Fabara stated that § 87(2)(b) never asked either of them to provide their name or shield numbers.

When asked why PO Pulice indicated on the UF-250 that § 87(2)(b) refused to comply with officers' directions leading to reasonable fear for safety, PO Pulice stated, "that was just, him lunging around, after we asked him to get out of the car he was a little timid at first then he stepped out, he didn't really say anything, just like waited a second or two then exited the car." That was the only portion of the incident in which § 87(2)(b) refused to comply with orders. When asked why PO Pulice noted that § 87(2)(b) provided false or inconsistent answers to officers' questions, PO Pulice stated "When we asked him who he was seeing, first he said 'my girlfriend', then he said 'my cousin', then he said 'somebody's coming down'."

Although Sgt. Fabara could not recall the exact sequence of events, he told the CCRB that "according to procedure, you would always frisk before (asking for someone's identification)" in order to address the safety concern first. Sgt. Fabara also stated that there is no police procedure requiring officers to question an individual after ensuring that he has no weapons on his person and prior to searching the person's vehicle. Sgt. Fabara did not recall § 87(2)(b) specifically refusing to comply with any officers' directives as indicated on the UF-250, however, Sgt. Fabara assumed that PO Pulice was referring to an instance when PO Pulice requested that § 87(2)(b) move to a specific spot and § 87(2)(b) refused. Sgt. Fabara did not recall § 87(2)(b) providing in an evasive, false, or inconsistent response to officers' questions. Sgt. Fabara stated that he signs off on many reports and his signature does not necessarily endorse that the contents of the report are correct.

Officer CCRB History

Of the numerous complaints filed against Sgt. Fabara, he has received charges for five substantiated allegations. The related cases are 200512992 for which the allegations were a stop and question, and a frisk; and 200508693 for which the allegations were entering and searching a location, refusing to provide his name and shield, authorizing the detention of an individual, and authorizing a frisk. § 87(2)(g). PO Pulice received command discipline for a substantiated allegation in CCRB case 200411089 (Enc.1a-d and 2).

Complainant CCRB History

§ 87(2)(b) has no open or prior CCRB complaints (Enc.3).

Criminal Conviction History

According to a search of the BADS database, § 87(2)(b) has no history of criminal conviction.

Disposition of Summonses

According to the Traffic Summons Bureau on September 6, 2006, both summonses issued to § 87(2)(b) have been rescheduled due to an administrative change.

Conclusions and Recommendations

Officer Identification

PO David Pulice was identified via his name and tax ID written on the two summonses issued to § 87(2)(b) at the conclusion of the incident. Additionally, the officers' memobooks (Enc.11a-b), roll call (Enc.8a-b), and each officer's testimony verified their presence at the incident.

§ 87(2)(b), § 87(2)(g)

[REDACTED]

Undisputed Issues

Undisputed is that Sgt. Fabara frisked § 87(2)(b) and that PO Pulice looked inside the front driver and passenger's side of his vehicle. It is undisputed that the three men moved to the rear of § 87(2)(b) Gale's vehicle and at some point, the officers obtained § 87(2)(b) ID and issued him two summonses for traffic violations.

§ 87(2)(b), § 87(2)(g)

[REDACTED]

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegations

Allegation A – Abuse of Authority: Sgt. Carlos Fabara stopped and questioned § 87(2)(b)

Allegation B – Abuse of Authority: PO David Pulice stopped and questioned § 87(2)(b)

Sgt. Fabara and PO Pulice sufficiently explained that their initial reason for stopping § 87(2)(b) was because they saw that he made a left turn without signaling. This traffic violation has been further confirmed in that § 87(2)(b) did not deny it happening and was not angered over the summons itself. When an officer has reasonable suspicion that an offense has occurred, it is expected that the officer stop the individual and conduct a stop based on the alleged violation. § 87(2)(b), § 87(2)(g)

Allegation C – Abuse of Authority: Sgt. Carlos Fabara frisked § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g) Sgt. Fabara frisked § 87(2)(b) almost immediately upon approaching him. It is

§ 87(2)(g)

Both officers described § 87(2)(b) making furtive motions and acting nervously upon observing the officers in a high crime area – notably gun violence. In order for the frisk to be permissible, these three factors need to equate to reasonable suspicion that § 87(2)(b) possessed a weapon. § 87(2)(b), § 87(2)(g)

Allegation D – Abuse of Authority: PO David Pulice searched the car in which § 87(2)(b) was an occupant.

Regarding PO Pulice's search of § 87(2)(b) vehicle, People v Torres held that, "once the suspect is outside the car, there was no reason to fear that the weapon could be grabbed, nor did the police have the

right to enter the car on the theoretical possibility that once the suspect is released he could re-enter the car and gain control of the weapon.” Furthermore, officers need probable cause in order to search a vehicle and given that § 87(2)(b), § 87(2)(g)

Allegation E – Abuse of Authority: Sgt. Carlos Fabara refused to provide his name and shield number to § 87(2)(b)

§ 87(2)(b), § 87(2)(g)
§ 87(2)(b), § 87(2)(g)
§ 87(2)(b), § 87(2)(g). PO Pulice’s tax ID number – although faded on the copy of the summonses received by the CCRB – was legible at the time of the incident. This is proven by the fact that § 87(2)(b) Sr. was able to provide PO Pulice’s tax ID for the CCRB upon filing the complaint for his son. § 87(2)(b), § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: